UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

David Lee Justin, Sr.,

Debtor.

Case No.: 12-60394
Chapter 7
Hon. Mark A. Randon

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Michael A. Stevenson, Trustee,

Plaintiff,

Adversary Proceeding
Case No.: 13-05234

v.

PHI Air Medical, LLC,

Defendant.

_____/

ORDER GRANTING PHI AIR MEDICAL, LLC'S MOTION FOR SUMMARY JUDGMENT AND DENYING THE TRUSTEE'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

PHI Air Medical, LLC ("PHI") transported Debtor's wife from Michigan to Ohio for an emergency lung transplant. That day, Debtor assigned PHI his right to any insurance reimbursement from Blue Cross Blue Shield ("BCBS"), his health care provider. But when Debtor received BCBS's $33,729.00 reimbursement check – shortly before filing for Chapter 7 bankruptcy – he did not turn it over to PHI. Instead, he signed the check over to the bankruptcy estate's Trustee.

PHI wants to be paid the full amount of the reimbursement proceeds; the Trustee says the proceeds belong to the estate, and refuses to pay PHI anything other than the reduced amount it may receive as an unsecured creditor. The Trustee filed this adversary proceeding to determine the interest in the reimbursement proceeds. Cross motions for summary judgment are pending. The Court heard argument on June 30, 2014.

The Court finds that the Debtor's pre-bankruptcy, absolute assignment of his right to reimbursement created a constructive trust, by which he simply held the check for PHI; the reimbursement proceeds did not become property of the estate under 11 U.S.C. § 541(a). Therefore, PHI's motion for summary judgment is **GRANTED**, the Trustee's motion for summary judgment is **DENIED**, and the Trustee shall remit payment to PHI for $33,729.00 by ***July 23, 2014***.

II. BACKGROUND

On May 9, 2012, PHI transported Debtor's wife, by helicopter, from McClaren-McComb Hospital in Mount Clemens, Michigan to the Cleveland Clinic in Cleveland, Ohio where she underwent an emergency lung transplant. PHI was not paid for this service. But Debtor, the primary insured through BCBS, signed a Patient Consent and Assignment of Benefits form on behalf of his wife, while she was sedated with Propofol and intubated. The form read, in part:

> I agree to pay Provider's [(PHI)] charges for the Services, including but not limited to any co-payments, deductibles or other expenses not covered by insurances. All charges shall be due and payable on receipt of invoice. Unpaid accounts shall bear interest at the rate of 12% per annum. *I assign and transfer to Provider all my rights in and to: (a) all insurance benefits (whether such insurance is owned by me or not) payable as a result of the injury or medical condition that necessitated the Services[.]*

(Emphasis added).

BCBS's policy with respect to out-of-network providers, like PHI, is to send reimbursement payments directly to the insured. So, after PHI completed a health insurance claim form, BCBS mailed the $33,729.00 check to Debtor.[1] Several weeks later, Debtor filed his bankruptcy petition; he signed the check over to the Trustee but never paid PHI.[2]

III. STANDARD OF REVIEW

Under Rule 56 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, summary judgment must be granted "if the movant shows that there are no genuine issues as to any material fact in dispute and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Care To Live v. Food & Drug Admin*., 631 F.3d 336, 340 (6th Cir. 2011). The standard for determining whether summary judgment is appropriate is whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Pittman v. Cuyahoga County Dep't of Children Servs*., 640 F.3d 716, 723 (6th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). The Court must draw all justifiable inferences in favor of the party opposing the motion. *Pluck v. BP Oil Pipeline Co.*, 640 F.3d 671, 676 (6th Cir. 2011). However, the nonmoving party may not rely on mere allegations or denials, but must "cit[e] to particular parts of materials in the record" as establishing that one or more material facts are "genuinely disputed." Rule 56(c)(1). A mere

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[1]The claim form noted that the claim was a "Self Pay" and was being "Paid to Patient." However, it was completed by PHI and was a separate document from the Patient Consent and Assignment of Benefits form Debtor signed.

[2]Sadly, both Debtor and his wife are now deceased.

scintilla of evidence is insufficient; there must be evidence on which a jury could reasonably find for the non-movant. *Hirsch v. CSX Transp., Inc.*, 656 F.3d 359, 362 (6th Cir. 2011).

IV. ANALYSIS

A. There was a Valid Assignment of the Reimbursement Proceeds

The Trustee first argued that Debtor did not assign PHI his right to the reimbursement proceeds because neither Debtor nor his wife signed the Patient Consent and Assignment of Benefits form. But, on June 20, 2014, PHI submitted a legible copy of the form that clearly shows Debtor's name in signature form.

Without providing any contrary evidence, the Trustee now argues that the signature is not Debtor's. But this is the very type of wholly unsupported allegation and denial that Rule 56(c)(1) provides is insufficient to defeat summary judgment. The Court finds that there was a valid assignment of the reimbursement proceeds.

B. The Reimbursement Proceeds are not Property of the Bankruptcy Estate Because a Constructive Trust was Created

The next issue is whether the reimbursement proceeds are property of the bankruptcy estate, broadly defined as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). If Debtor had an interest in the check when he filed bankruptcy, the proceeds would constitute property of the estate:

> The overriding question when determining whether insurance proceeds are property of the estate is whether the debtor would have a right to receive and keep those proceeds when the insurer paid on a claim. When a payment by the insurer cannot inure to the debtor's pecuniary benefit, then that payment should neither enhance nor decrease the bankruptcy estate. In other words, when the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate.

Houston v. Edgeworth (In re Edgeworth), 993 F.2d 51, 55-56 (5th Cir. 1993). However, if the circumstances of the assignment are such that the Court finds a constructive trust was created, by which Debtor simply held the check for PHI, the proceeds would not be property of the estate and, therefore, beyond the Trustee's reach.

"[T]he court must look to state law to determine whether to impose a constructive trust on property within the debtor['s] possession." *In re Rowland*, 140 B.R. 206, 208 (Bkrtcy. S.D. Ohio 1992). In Michigan:

> constructive trusts are products of equity [and] arise by operation of law. Constructive trusts are remedial in nature and prevent unjust enrichment. A constructive trust may be imposed when property has been obtained under circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property. A constructive trust need not arise because the property was wrongfully acquired, it may arise out of unconscionability and unjust enrichment. In decreeing a constructive trust, Michigan courts of equity are not bound by an unyielding formula and may form any relief as the equity of the circumstances dictates. It is for the party seeking to establish a constructive trust to prove by a preponderance of the evidence.

In re Mayer, 2013 WL 4786826, at *4 (Bkrtcy. E.D. Mich. Sept. 4, 2013) (internal citations and quotations omitted).

The Court finds that PHI rendered emergency medical services for Debtor's wife, and it would be unconscionable for Debtor to retain the reimbursement proceeds. A constructive trust was established when Debtor received the check after absolutely assigning PHI his right to any insurance reimbursement. *In re Anchorage Nautical Tours, Inc.*, 102 B.R. 741, 744 (9th Cir. BAP 1989) ("[w]ith assignment, the appellee/assignor's rights were fully extinguished so that if it later received proceeds of the assigned right it held them in constructive trust for the assignee"); *see also* Comment, Restatement (Second) of Contracts § 341 ("[a]n effective assignment extinguishes the assignor's right [and] [a]ny proceeds of the assigned right received

by the assignor thereafter are held in constructive trust for the assignee"); 4 *Collier on Bankruptcy* (quoting H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 368 (1977)):

> Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance, and the insurance company had sent the payment of the bills to the debtor before the debtor had paid the bill for which the payment was reimbursement, the payment would actually be held in constructive trust for the person to whom the bill was owed.

Debtor had no legal or equitable interest in the reimbursement check when he filed for bankruptcy; the proceeds are, therefore, not property of the estate. *Gamble v. Mathias*, 61 F.2d 911, 911 (5th Cir. 1932) ("a present assignment of an interest passes the title to it as of the date of the assignment; [] moneys collected under it are the moneys not of the bankrupt, but of the assignee").

The Trustee relies on *Tulsa Spine Hosp. v. Tucker (In re Tucker)*, 346 B.R. 844 (Bkrtcy. E.D. Okla. 2006) to support his position that, irrespective of the assignment to PHI, Debtor retained an interest in the check. In that case, the debtor received a cervical fusion at Tulsa Spine Hospital, which was not in BCBS's network; therefore, BCBS paid benefits directly to the debtor. However, the debtor signed a document that purportedly assigned her right to the insurance proceeds to the hospital:

> I, as the patient of Tulsa [S]pine Hospital will agree to forward any payments made to me by Blue Cross Blue Shield to the hospital along with a copy of the explanation of benefits for the professional or medical expense benefits allowable, and otherwise payable to me under my current insurance policy as payment toward the total charges for the professional services rendered. **THIS IS A DIRECT ASSIGNMENT OF MY RIGHTS AND BENEFITS UNDER THIS POLICY.** This payment will not exceed my indebtedness to the above-mentioned assignee and facility as agreed to take insurance payment as payment in full. Failure to forward any insurance payments that I will receive will revert my claim back to full face value, which will be my responsibility. . . .

In re Tucker, 346 B.R. at 848-49 (emphasis in original). The debtor received checks from BCBS made payable to her husband, the primary insured. She believed the checks belonged to her so she endorsed them, deposited them into her joint checking account, and spent the money. She later discovered that she was liable for the entire amount owed and made payment arrangements with the hospital. *Id.* at 849.

Significantly, the issue in *In re Tucker* was whether the hospital's claim against the debtor was dischargeable under 11 U.S.C. § 523(a)(4) and (6). In dicta, however, the court stated:

> [t]he proceeds were actually the property of [the debtor], subject to the [hospital's] claim against those proceeds which arose out of [debtor's] promise to pay her debt to the [hospital]. The resulting obligation of the [d]ebtor[] to [her] creditor, Plaintiff Hospital, did not create a trust or fiduciary relationship because of the language of th[e] assignment.

Id. at 850. In support of its decision that the assignment's language did not create an *express* trust[3] in which the debtor was required to preserve the funds for distribution to the hospital, the court pointed to the language that gave the patient two choices: turn over the insurance proceeds directly to the hospital and receive a discount, or pay the bill in full. *Id.* at 851. According to the court, "[t]his Acknowledgment contemplates the possibility that the purported trust res will be distributed to someone other than the beneficiary and does not expressly prohibit that event." *Id.*; *see also Univ. Orthopaedic Assoc. of Rochester v. Catalano (In re Catalano)*, 98 B.R. 168 (Bkrtcy. W.D.N.Y. 1989) (finding that the assignment of benefits by the insured to the hospital

[3]"The elements of an express trust are the intent to create a trust, a clearly defined trust res, and specific trust duties." *In re Stefanoff*, 97 B.R. 607, 609 (Bkrtcy. N.D. Okla. 1989). A constructive trust is insufficient to create a fiduciary relationship under 11 U.S.C. § 523(a)(4), the provision related to dischargeability at issue in *In re Tucker. Davis v. Aetna Acceptance Co.*, 293 U.S. 328, 333 (1934); *In re Weber*, 99 B.R. 1001, 1008-09 (Bkrtcy. D. Utah 1989).

did not establish an express trust; therefore, the money owed to the hospital was dischargeable under 11 U.S.C. § 523(a)(4)).

But *In re Tucker* is distinguishable from this case for reasons beyond its discussion of an express – as opposed to a constructive – trust. Here, Debtor's assignment of the reimbursement proceeds to PHI did not provide an option for him to retain it once received: it transferred *all* rights to PHI.

The Court also rejects the Trustee's argument that PHI's invoice and letter to Debtor's wife make this case similar to *In re Tucker*. Again, unlike *In re Tucker*, the assignment of insurance benefits form, itself, was absolute. To the extent the invoice and letter could be construed as giving Debtor the option to keep the reimbursement proceeds – they came after Debtor's absolute assignment of his rights.

Reading the letter and invoice together with the Patient Consent and Assignment of Benefits form, PHI anticipated BCBS would send the reimbursement check directly to Debtor. PHI sought to ensure Debtor would forward the proceeds to pay for the transportation services it provided. The payment arrangement provision simply advised Debtor's wife of her alternatives to pay the balance if not fully covered by insurance. This case is not factually similar to *In re Tucker*.

V. CONCLUSION

Debtor's pre-bankruptcy, absolute assignment of his right to reimbursement from BCBS to PHI, for emergency transportation services PHI provided to his wife without payment, created a constructive trust. Therefore, the reimbursement proceeds are not property of the bankruptcy estate. In light of this finding, the Trustee's remaining arguments – that PHI was required to file

a financing statement to perfect its interest, and that Michigan Compiled Laws § 440.9109(h) does not apply to BCBS – need not be addressed.[4] PHI's motion for summary judgment is **GRANTED**, the Trustee's motion for summary judgment is **DENIED**, and the Trustee must remit the proceeds from the reimbursement check to PHI by ***July 23, 2014***.

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Signed on July 09, 2014

/s/ Mark A. Randon
Mark A. Randon
United States Bankruptcy Judge

[4]These arguments are only at issue if the reimbursement proceeds are deemed property of the estate under § 541.